Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Comment Sought on Competitive Bidding Procedures for Auction 103	)	AU Docket No. 19-59
	)	
	)	

To: The Commission

COMMENTS OF PVT NETWORKS, INC.

PVT Networks, Inc. ("PVT" or "the Company"), by its attorneys, hereby submits comments on the Commission's proposed procedures to be used for Auction 103, the incentive auction of Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6-38.6 GHz), 39 GHz (38.6-40 GHz), and 47 GHz (47.2-48.2 GHz) bands.[1] PVT generally supports the FCC's proposal to use an ascending clock auction format for generic license blocks offered in Auction 103, followed by a sealed bid assignment phase for frequency-specific license assignments; however, PVT seeks clarification regarding the final assignment of blocks that are grouped together as "Category M/N" in PEAs that include and that are adjacent to locations where Upper 37 GHz channels are used by the DoD and Federal Space Research Service. In particular, and as discussed in greater detail below, PVT is concerned that the Commission's proposal to group the Upper 37 GHz Band and 39 GHz Band channels together as a matter of expedience in order to "speed up the auction" could have a significant impact upon the substantive interference protection rights that PVT is currently entitled to as a 39 GHz Band incumbent. PVT respectfully requests that the Commission adopt Auction 103 procedures that limit the availability of Lower 37 GHz band channels in certain geographic areas identified by NTIA, and make available for bidding Category M and Category N licenses as separate products in PEA markets adjacent to identified coordination zones.

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[1] *See Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz and 47 GHz Bands for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 103*, Public Notice, FCC 19-35 (*rel.* April 15, 2019) ("*Auction 103 Procedures Comment PN*").

Statement of Interest

PVT is a small business and a wholly-owned subsidiary of the Peñasco Valley Telephone Cooperative in Artesia, New Mexico. The Company currently holds incumbent 39 GHz licenses in the Roswell PEA (which includes Chaves, Eddy and Lea Counties in NM, and Yoakum and Gaines Counties in TX), the El Paso PEA (El Paso County, TX), the Las Cruces PEA (Sierra and Dona Ana Counties in NM), the Alamogordo PEA (Lincoln and Otero Counties in NM) and the Van Horn PEA (Culberson and Hudspeth Counties in TX). For purposes of the 39 GHz rebanding effort, all of PVT's PEA channel blocks are clear of Rectangular Service Area (RSA) incumbents. PVT has a significant interest in preserving the value of the 39 GHz spectrum that it previously acquired at auction, as well as ensuring its ability to provide 5G services in its licensed areas free from harmful RF interference.

Discussion

As part of its multi-year effort to ready the Upper 37 GHz, 39 GHz, and 47 GHz bands for auction later this year, the FCC has worked to resolve pending issues regarding the U.S. Department of Defense's ability to use the Upper 37 GHz band, which is allocated to the fixed and mobile services on a primary basis for Federal and non-Federal use. In the *Spectrum Frontiers R&O*, the FCC adopted rules to protect a limited number of Federal military sites across the full 37 GHz band, and it established coordination zones to protect Federal Space Research Service (SRS) earth station sites.[2] The locations enumerated in Section 30.205 of the Commission's rules include areas within a 30 km radius of China Lake, CA; San Diego, CA; Nanakuli, HI; Fishers Island, NY; Saint Croix, VI; Fort Irwin, CA; Fort Carson, CO; Fort Hood, TX; Fort Bliss, TX; Yuma Proving Ground, AZ; Fort Huachuca, AZ; White Sands Missile Range, NM; Moody Air Force Base, GA and Hurlburt Air Force Base, FL; and specific lat/long coordination zones defined around Goldstone, CA; Socorro, NM and White Sands, NM. These coordination zones are significant to PVT because the geographic markets where it currently holds

[2] *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al*., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016) (*Spectrum Frontiers R&O*).

incumbent 39 GHz licenses overlap with, or are adjacent to, the White Sands Missile Range and the coordination zones defined around White Sands, NM.

But the creation of these coordination zones right in PVT's "backyard" – possibly restricting an Upper 37 GHz band licensee's ability to deploy service and negatively impacting the value of its spectrum – did not raise alarms for the Company, because its spectrum holdings were not in the 37 GHz band. At least not until the FCC's proposed incentive auction and 39 GHz rebanding procedures appeared to create the very real possibility that its incumbent 39 GHz license blocks could be "reconfigured" into Upper 37 GHz Band spectrum.

The *Auction 103 Procedures Comment PN* proposes categories of generic blocks for bidding at paragraph 34. The Commission proposes that "the first category will consist of the available blocks between 37.6–40 GHz. This category, designated Category M/N, will comprise a total of twenty-four blocks: ten in the Upper 37 GHz band (Blocks M1–M10) and 14 in the 39 GHz band (Blocks N1-N14)." While the generic Category M and Category N blocks each represent the same amount of spectrum, and the Upper 37 GHz and 39 GHz bands are contiguous spectrum, the interference protection rights to which licensees in each band are entitled can be very different. This is especially true for PEA markets that overlap with and that are adjacent to the Section 30.205 coordination zones. The Commission and commenters on the Spectrum Frontiers *Third FNPRM* have recognized that the possibility of increasing the number of federal sites in the Upper 37 GHz band, or establishing a process for future federal sites that lacks sufficient certainty, "might negatively affect an auction of the Upper 37 GHz band and the value of the spectrum."[3] It should stand to reason, then, that if the *possibility* of additional federal sites in the Upper 37 GHz band could negatively impact this spectrum's value, the *reality* of such protected

[3] *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al*., Fifth Report and Order, FCC 19-30, (*adopted* April 12, 2019) (*Fifth R&O*) at Para. 17, *citing* to AT&T Comments at 10–11; CTIA Comments at 14–16; T-Mobile Comments at 15–16; Ericsson Comments at 13; AT&T April 5 *Ex Parte*; CTIA April 5 *Ex Parte*; T-Mobile April 5 *Ex Parte;* Verizon April 4 *Ex Parte*.

federal sites in or adjacent to a particular PEA would clearly have an negative impact on that spectrum's value.

Why should the additional cost and uncertainty of Upper 37 GHz band coordination procedures and possibility of spectrum use limitations be of concern to PVT if it is a 39 GHz band incumbent? Quite simply, because the FCC's proposed Auction 103 procedures treat generic Upper 37 GHz band and 39 GHz band blocks as fungible replacements in all areas. In speaking of the generic Category M/N channel blocks, the Commission observes that "[t]hese 24 blocks represent a continuous swath of spectrum, and including them in a single bidding category should speed up the auction and give bidders greater flexibility to aggregate multiple contiguous spectrum blocks."[4] Moreover, clock phase bidding procedures will determine a single price for all the generic blocks in each category in each PEA.[5]

In the situation where an incumbent 39 GHz licensee has chosen to participate in the incentive auction, 39 GHz rebanding and voucher procedures adopted in the *Spectrum Frontiers Fourth R&O* last December will give it the choice between receiving either the value of its voucher holdings in each PEA (*i.e.*, the product of the number of vouchers held and the final PEA clock price), or bidding to retain or reconfigure its current PEA spectrum rights, with the understanding that the voucher(s) would entitle them to a payment sufficient to pay their winning clock phase bid regardless of the final clock phase price.[6] This is a positive. But in a situation where there is reason for the auction marketplace to stay away from a portion of the Category M/N blocks – such as areas where there are known incumbent federal operations in the Upper 37 GHz band – it is foreseeable that this could suppress bidding demand and decrease the value of 39 GHz band spectrum in that PEA. If the marketplace does reflect demand for Category M/N blocks since the supply of unencumbered 39 GHz band spectrum is perceived as being limited in a particular PEA, the only way that an incumbent 39 GHz licensee can ensure that it retains 39

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4 *Auction 103 Procedures Comment PN* at Para. 34.

5 *Id.* at Para 35.

6 *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.*, GN Docket No. 14-177, Fourth Report and Order, FCC 18-180, at para. 4 (Dec. 12, 2018) (*Spectrum Frontiers Fourth R&O*).

GHz band spectrum in its incumbent areas, under Auction 103 bidding and 39 GHz rebanding procedures, would be to submit a successful bid for these specific channels in the assignment phase. Otherwise, its spectrum "winnings" (generic Category M/N blocks acquired based on the final clock phase value of its vouchers) could effectively be pushed out of the 39 GHz band. As a small rural telephone cooperative and rural telecommunications provider, PVT lacks the resources to submit large clock and assignment phase bids just to preserve its right to remain in the 39 GHz portion of the Category M/N blocks. This is especially true when it is probable that PVT would be bidding dollar-for-dollar against the likes of AT&T and other nationwide providers that already have significant 39 GHz holdings and will be likely participants in FCC Auction No. 103.

Faced with this situation, PVT understands it could choose not to participate in the incentive auction, and to instead accept modified licenses based on a reconfiguration of its holdings proposed by the Commission. However, this would mean that PVT would need to forego any opportunity to bid for additional spectrum rights in new areas, or to "sell" its incumbent spectrum rights in other areas. It would also mean having to forego an opportunity to select in which part of the band its contiguous spectrum blocks are located.

PVT believes the Commission can easily address this issue by treating the Category M and Category N as separate products in each of the southern New Mexico and West Texas PEAs where it holds incumbent 39 GHz band rights. The Commission could similarly treat the Category M and Category N channels as separate products for other PEAs that overlap or are adjacent to the Section 30.205 coordination zones. Incumbent 39 GHz licensees in these areas, such as PVT, should be given vouchers that are equal in value to the final clock phase value of generic Category N (39 GHz) channels in that PEA. Moreover, since the 39.5-40 GHz portion of the 39 GHz band is allocated to military mobile-satellite service (MSS) and fixed-satellite service (FSS) earth stations, and these operations are not required to protect non-federal fixed and mobile services, contiguous channel assignments for incumbent

39 GHz licensees in these PEAs should start at the bottom of the 39 GHz band (*i.e.*, at 38.6 GHz) and work their way up.

This Auction 103 procedure proposed by PVT is fair because it will ensure that incumbent 39 GHz licensees retain rights to spectrum in the same incumbent band, and it is economically sound because it would let the marketplace more accurately value the 39 GHz band rights of incumbent licensees in areas where there is likely to be a disparity (and quite possibly a significant disparity) in value between the Upper 37 GHz band and the 39 GHz band. As a result, it would likely encourage broader participation in the incentive auction. Creating separate categories and allowing separate bidding for generic Category M and Category N license blocks should not be difficult for the FCC to implement since it did the same thing in Auction 102, where in certain PEA markets, encumbered or partially encumbered spectrum blocks were made available as a Category UI block.[7]

CONCLUSION

PVT has been an active participant in comments on 39 GHz rebanding and it appreciates the complexity that is inherent in making new spectrum bands available for commercial use while at the same time protecting vital federal government operations. According to NTIA, the 37-38.6 GHz band is important to support U.S. goals to provide a permanent manned presence in Earth's orbit (on or near the moon), initiate manned exploration of the planet Mars, and to support data return links to the very long baseline interferometer (VLBI).[8] Because of the importance of these federal government radio operations, the Commission should refrain from auctioning Lower 37 GHz band channels in certain geographic areas identified by NTIA and make available for bidding Category M and Category N licenses as separate products in PEA markets adjacent to identified coordination zones. Doing so would have no impact on bidding for Lower 37 GHz blocks in the vast majority of the country that is removed from

[7] In the G Block, PEAs 15 (Phoenix, AZ), 26 (Las Vegas, NV), and 76 (Reno, NV) are completely encumbered. PEA 75 (Albuquerque, NM) is partially encumbered; 75 megahertz at 25.150–25.225 GHz is available as a Category UI block.

[8] Letter from David J. Redl, Assistant Secretary for Communications and Information, Department of Commerce to Ajit Pai, Chairman, Federal Communications Commission (filed Apr. 11, 2019) (*NTIA Letter*) at 3.

these incumbent operations, it would result in fair treatment of incumbent licensees that acquired their 39 GHz rights in reliance on the Commission's rules and prior auction procedures, and that should be entitled to retain spectrum in their band of choice.

Respectfully submitted,

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